

1 approximately seventeen months prior to the filing of the bankruptcy petition. Plaintiffs contend two
2 things:

3 1.) That there was a signing and notarizing of a deed that occurred four days before the filing of a
4 bankruptcy and 2.) a recording of that deed approximately four days after the filing of the bankruptcy.
5 Plaintiffs have not rested on either of those dates as the date of conveyance as their statement of
6 undisputed facts for the Summary Judgment Motion contends that the transfer occurred on October 14,
7 and that it subsequently occurred on October 22. Clearly in order to sustain the legal ruling of avoidance
8 pursuant to §549 of the code, Plaintiffs are maintaining that the date of recording of the document is the
9 date of the transferring of the interest. California Law does not support them.

10 Plaintiffs have single mindedly maintained that the case of *In Re Brooks-Hamilton* 348 BR 512
11 (Northern District of California 2006) supports their position whereas Defendants-Appellants maintain
12 that the *Brooks-Hamilton* case does not support the Plaintiffs position. Both parties briefed the case with
13 some emphasis in the opening brief and the opposition to the opening brief. Further briefing will not
14 occur within this document, however, the proposition that is being maintained by Plaintiff (and is
15 necessary to support a §549 basis for decision) is that the transfer of the property would have occurred
16 on October 22. Not only does *Brooks-Hamilton* not support that proposition, because the case is
17 distinguishable, but the position Plaintiff maintains that *Brooks-Hamilton* stands for (that a transfer
18 occurs by the recording of the deed) is contrary to California Law clarified by *Lawler v. Gleason* 130
19 Cal. App. 2nd 390, 395 (1955) and acknowledged as the law in California by a Central District of
20 California District Court in *Haye v. United States* 461 F. Supp. 1168, 1172 (1978). Those Courts agree
21 that the recordation of a device is exclusively used to establish priority, but has nothing at all to do with
22 the conveying of title. *Hamilton-Brooks* could not overrule this in spite of Plaintiff's insistence that
23 that's seemingly what has occurred.

24 The Issue Still Remains In Dispute.

25 **THE STATUTE OF LIMITATIONS ISSUE**

26 Plaintiff asserts that the decision of the bankruptcy court decided that the statute of limitation set
27 within § 549 was equitably tolled. That is an inference at best. It is the position of Appellants that the
28 Court never even addressed the issue and that it was deciding the matter exclusively on the credibility of

1 the party, and in doing so was finding that the party, Appellant was acting in an inappropriate manner
2 towards the administration of his bankruptcy case and therefore did not deserve to have his position
3 considered. Appellants maintain this issue was not properly dealt with because under the structure of
4 the Bankruptcy Code the transfer of a property which would have occurred seventeen months prior to
5 the time that the bankruptcy is filed is not a transfer that is required to be reported on the bankruptcy
6 schedules of a petitioner and therefore the failure to mention them on the returns does nothing more that
7 complies with the law. 11 USC §549 has a very clear limiting provision, which should be, until
8 disproven, the controlling identification of the timeliness of the action. If there was to be a finding of
9 equitable tolling, certainly a finding of fact would be required upon that basis. However the Courts
10 rationale, as cited in the opening brief, is a rationale of credibility.

11 **THE FINDING ON THE RECORD?**

12 Plaintiff's contention is that it was the record before the bankruptcy court that actually caused it
13 to make its decision. Plaintiff then seemingly parses the record for a series of facts (??) which they assert
14 supports the judgment. However the facts they present are just a reiteration of the facts that they
15 previously asserted on other propositions. The statement of facts presented by Plaintiff are
16 distinguishable from the statement of facts presented by defendant, especially on the critical issue of
17 when the conveyance of the property actually occurred (which has a corresponding effect upon the
18 requirement of the debtor to report the transfer on their bankruptcy schedules, which has a
19 corresponding effect upon the statute on limitations contained in Section 549.) Appellant maintains that
20 there isn't any other way for the Court to have come to the conclusion that it did other than by
21 disbelieving the statement of facts presented by defendant¹. The essential facts because of Plaintiffs
22 insistence, appear to still remain in dispute.

23 **CONCLUSION**

24 This case has been decided by a Bankruptcy Court in a Summary Judgment Motion. The logical
25 and real affect of the decision of the bankruptcy court is to tell defendant what he did at what point and
26 with what frame of mind. Defendant contends that those events did not happen in the way that Plaintiff

27 ¹ The documentary evidence presented in the case also supports defendant. In fact the documentary evidence is
28 itself militant against the speculations of Plaintiff as to the time of transfer.

1 asserts. And, Defendant in spite of living those facts, and in spite of acting with deliberate decision
2 making processes, has been told that that is not the way it happened: "This is what you did and this is
3 what you thought". The court has concluded this without ever having met or talked with defendant.
4 Certainly defendants are entitled to a bit more dignity than that which has been given them to this point.

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8 Dated: June 9, 2008

9 /s/Daniel J. Winfree

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11 Attorney for Appellants
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Case No.: 08CV0256-LAB (AJB)

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/s/ Daniel J. Winfree
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